

STATE OF LOUISIANA LEGISLATIVE AUDITOR

Department of Elections
and Registration
Baton Rouge, Louisiana

March 17, 1999

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Investigative Audit

Daniel G. Kyle, Ph.D., CPA, CFE
Legislative Auditor

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Department of Elections and Registration

March 17, 1999



Investigative Audit
Office of the Legislative Auditor
State of Louisiana

Daniel C. Kyle, Ph.D., CPA, CFE
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March 27, 2009

HONORABLE JERRY M. FOWLER, COMMISSIONER
DEPARTMENT OF ELECTIONS
AND REGISTRATION
Baton Rouge, Louisiana

Transmitted herewith is our investigative report on the Department of Elections and Registration. Our examination was conducted in accordance with Title 24 of the Louisiana Revised Statutes and was performed to determine the propriety of certain allegations received by this office.

This report presents our findings and recommendations, as well as your response. Copies of this report have been delivered to the Department of Elections and Registration; the Honorable Doug Morone, District Attorney for the Nineteenth Judicial District of Louisiana; the Louisiana State Board of Ethics; and others as required by state law.

Respectfully submitted,

Daniel G. Kyle, CPA, CFF
Legislative Auditor

DCF-Affairs

2009-03-27

Executive Summary

Investigative Audit Report Department of Elections and Registration

The following summarizes the findings and recommendations, as well as management's response that resulted from this investigation. Detailed information relating to the findings and recommendations may be found at the page number indicated. Management's response may be found at Attachment I.

Drayage Contracts Awarded to Corporations Associated With Former Director of Elections

(Page 1)

Findings: From 1991 through 1998, the Department of Elections and Registration (department) entered into drayage contracts and paid Suncoast Trucking, Inc., \$440,720 and BEK Enterprises, Inc., \$55,525. Such companies were directly associated with Mr. Ben Trishel while he served the department as Director of Elections.

Recommendation: We recommend that the department ensure that its employees and their family members do not enter into contracts or other transactions with the department. The department should pay particular attention to those employees who, in the course of their duties, participate in the bid award process. The department should ensure that no payments are made to employees, their family members, or related corporations other than those payments related to their official employment. The department should require each employee to certify, on an annual basis, that no prohibited circumstance is in existence and disclose all possible entities in which such a conflict of interest may arise. We further recommended that the District Attorney for the Nineteenth Judicial District of Louisiana and the Louisiana State Board of Ethics review this information and take appropriate legal action, if necessary.

Management's Response: The department has requested an advisory opinion from the State Board of Ethics as to the ethical considerations involved and will take any necessary action as advised by the Board of Ethics. In addition, the department shall incorporate a section in its personnel manual to ensure that department employees

and their immediate family members do not enter into contracts and leases or receive payments prohibited by the provisions of the Code of Governmental Ethics. Furthermore, the department is requiring each employee to disclose any possible conflict or transactions in which a conflict of interest may arise.

**Drayage Services Required of Contractors
Were Performed by Department Employees**

(Page 49)

Finding: The drayage services required by Samsyside Trucking's contracts for three parishes were actually performed, in part, by department employees and an individual employed by another department contractor while being paid by the department. In addition, the drayage services required by a contract with Mr. Dennis Ludwig were actually performed, in part, by a department employee.

Recommendation: The department contracts with private contractors to transport voting machines. Our observations disclosed that department employees are actually transporting the machines and, in one case, an individual whose services are being billed under a contract as a voting machine mechanic was also transporting voting machines. We recommend that the department reconsider whether it needs outside drayage contractors or whether, in some cases, department employees may be capable of performing these services resulting in savings to the department.

Management's Response: The department cannot eliminate the drayage contracts and perform drayage activities using current resources, and the cost of the department performing the drayage would greatly outweigh the benefits. The department has strengthened internal controls to ensure that the department is receiving the services from employees for which they are being paid and that they are not performing drayage for their personal benefit. The employees cited for performing drayage activities for drayage contractors while on the department's payroll are facing proposed disciplinary action by the department.

**Department Employee Improperly
Profited From Drayage Contracts**

(Page 5)

Finding: From 1996 through July 1998, Samsyside Trucking, Inc., and BEK Enterprises, Inc., paid department employee Mr. Tony Trichel a total of \$5,548 for contract labor and rental of his

personal vehicle in violation of Louisiana law. In some cases, Mr. Tony Trichel was also paid for the same hours by the department.

Recommendation:

We recommend that the department establish and implement a policy that prohibits its employees from deriving profits from any agreement or contract to which the department is a party. The department should make it clear to its employees their responsibilities and duties during the shipping and receiving of voting machines. In addition, the department should revise its time and expense reporting to include specific details as to the location, time, and services performed by each warehouse employee. Since the Registrar of Voters in one parish and the Clerk of Court in another parish were aware that Mr. Tony Trichel was involved with the delivery of voting machines, his supervisor should have also been knowledgeable of this and taken appropriate action. The department should require that supervisors periodically observe the activities of its warehouse employees and compile their observations to the time and attendance reports and expense reports submitted. Furthermore, the department should review its drayage policies and procedures to ensure the appropriate use of taxpayer dollars.

We further recommend that the District Attorney for the Nineteenth Judicial District of Louisiana and the Louisiana State Board of Ethics review this information and take appropriate legal action, to include seeking restitution.

Management's Response:

The department has requested an advisory opinion from the State Board of Ethics as to the ethical considerations involved and will take any necessary action as advised by the Board of Ethics. Mr. Tony Trichel is facing proposed disciplinary action by the department and will be required to refund to the department any amount paid for time reported on the time and attendance records while involved in drayage activities for the drayage contractors.

**Assistant Commissioner Improperly
Profited From Drayage Contracts****(Page 7)****Finding:**

Mr. Duane Fields, Assistant Commissioner for Minority Affairs, received \$9,796 from drayage contracts with Suncoast Trucking, Inc., and BHS, Inc., two companies contracted by the department, to haul voting machines to and from voting precincts.

Recommendation: We recommend that the department prohibit its employees from participating in transactions with and receiving compensation from department contractors. The department should require that each employee annually disclose all possible conflicts of interest and verify that they have complied with the Louisiana Code of Ethics and other state law. We further recommend that the District Attorney for the Nineteenth Judicial District of Louisiana and the Louisiana State Board of Ethics review this information and take appropriate legal action, to include seeking restitution.

Management's Response: The department has requested an advisory opinion from the State Board of Ethics as to the ethical considerations involved and the contention that certain employees may have profited from such and will take any necessary action as advised by the Board of Ethics. In addition, the department shall incorporate a section in its personnel manual to ensure that department employees and their immediate family members do not enter into contracts and leases or receive payments prohibited by the provisions of the Code of Governmental Ethics. Furthermore, the department is requiring each employee to disclose any possible conflict or transactions in which a conflict of interest may arise.

Department Employee Improperly Received Drayage Contract

(Page 9)

Finding: From 1995 through 1998, Mr. James R. King, a department employee, received \$123,268 through a drayage contract entered into on his behalf by an attorney, Mr. Hal Scott. Though Mr. King participated in the contract before 1995, records have not been provided to determine the amount he previously received.

Recommendation: This situation was caused by the agreement of a department employee and contractor and would not sufficiently be detected by management. Because of this situation and the fact that employee involvement in the drayage contracts is prevalent, we recommend that the department require each drayage contractor to submit a list of individuals who have ownership interest in the contractor entity and a list of those individuals that will be involved in performing the drayage services. We further recommend that the District Attorney for the Nineteenth Judicial District of Louisiana and the Louisiana State Board of Ethics review this information and take appropriate legal action, to include seeking restitution.

Management's Response: Management has requested an advisory opinion from the State Board of Ethics as to the ethical considerations involved in these dryage contracts. The Commissioner of Elections will take any necessary action as advised by the Board of Ethics. The department is also incorporating a section in the personnel manual to ensure that department employees and their immediate family members do not enter into contracts or receive payments from the department in violation of the provisions of the Code of Governmental Ethics. Furthermore, the department is requiring each employee to complete an annual certification form disclosing any possible conflicts or transactions in which a conflict of interest may arise. The department shall review all such forms and disclosures and request advisory opinions as necessary.

Warehouse Contracts Awarded to Department Employees in Violation of Code of Ethics

(Page 10)

Finding: The department awarded contracts to two employees, Mr. James Kirby King and Mr. James R. King, and to the wife of then Director of Elections, Mr. Ben Trichet, for the rental of storage warehouses. The department paid \$121,433 in rental payments through these contracts. The Louisiana Code of Ethics prohibits employees and their family members from entering into such contracts with the department.

Recommendation: We recommend that the department prohibit its employees from entering into contractual relationships with the department and implement policies and procedures to prevent future occurrences. We further recommend that the District Attorney for the Eastern Judicial District of Louisiana and the Louisiana State Board of Ethics review this information and take appropriate legal action, to include seeking restitution.

Management's Response: The department has requested an advisory opinion from the State Board of Ethics as to the ethical considerations involved in the above warehouse leases. The Commissioner of Elections will take any necessary action as advised by the Board of Ethics. The department is also incorporating a section in the personnel manual to ensure that department employees and their immediate family members do not enter into leases or receive payments from the department in violation of the provisions of the Code of Governmental Ethics. In addition, the department is requiring each employee to complete an annual certification form to disclose any possible conflicts or transactions in which a conflict of interest may arise. The department shall review all

such forms and disclosures and request advisory opinions as necessary.

**Employee Time and Attendance Reports Disagree
With Observations of Investigative Auditor**

(Page 12)

Finding: The time and attendance and expense reports for these department employees indicated that they were working during certain times and at specific locations that do not agree with observations of investigative auditors. On certain occasions, department employees were observed engaged in personal activities during their normal work hours.

Recommendation: The department should implement procedures to ensure that voting machine mechanics report the actual location and hours that they work on a daily basis. The department should revise its time and attendance report to require employees to maintain a detailed record of their activity to include arrival and departure times, locations worked, and duties performed. In addition, the department supervisors should periodically compare the information provided by employees on their time and attendance reports to the supervisors' personal observations. We further recommend that the District Attorney for the Nineteenth Judicial District of Louisiana review this information and take appropriate legal action, to include seeking restitution.

Management's Response: There were occasions when employees reported time worked on their time and attendance report while they were not performing meaningful service to the department. There were also times when employees were cited for performing drapage activities for drapage contractors while on the department's payroll. These employees who improperly reported hours worked on their time and attendance report and violated the department's policy prohibiting employees from performing drapage activities are facing disciplinary action by the department. These employees will also be required to refund the department the amount they were paid for which they did not perform their assigned duties. Furthermore, management has revised the time and attendance reporting procedures to include specific details as to the work location of each employee each day and the beginning and ending work times each day. The department

has also met with the supervisors to emphasize the importance of their personal observations of employees' performance and comparison to time and attendance reports submitted by the employees.

Department Should Reconsider Contract for Inspection Services

(Page 14)

Finding:

From October 1998 through June 1998, the department paid B. Lehman and Associates, Inc., \$465,100 to perform accessibility inspections of polling places, voting machine warehouses, and the offices of Registrars of Voters. We noted the following:

1. The obligation to ensure accessibility resides with local government not the department.
2. The majority of polling places are located in public buildings that are already required to be accessible, and for those polling places most at risk, the contractor is performing a limited inspection.
3. Department officials responsible for supervising the contract were not aware that all polling places were not being inspected annually.
4. An owner of B. Lehman and Associates is also a department contract attorney.
5. B. Lehman and Associates' employee who performs the inspections is the husband of the department's Director of Registrations.
6. At the contract rate, it appears that the department is paying approximately \$500 per polling location that may have been inspected.

Recommendations:

We recommend that the department reconsider its contract with B. Lehman and Associates and consider alternative methods to ensure that the state's polling places are accessible to our handicapped and elderly citizens. These alternatives might include:

1. Requiring each parish governmental authority to annually certify that all polling locations are in compliance with the accessibility requirements.

2. Posting notices regarding accessibility requirements at polling locations and maintain records of complaints and corrective measures taken
3. Using services of department employees located throughout the state to perform any inspections that may be required

Should the department determine that this contract continues to be necessary, we recommend that the contractor be required to prepare and submit:

1. A list of individuals and their qualifications that will be performing the inspection services
2. Inspection reports for each polling location examined including the date and time of the inspection, the specific compliance items observed, items of non-compliance noted, and the verification of the examiner as to the truthfulness of the report
3. Correspondence or other evidence of communication with local election officials when providing advice on accessibility issues

In addition, we recommend that the department reconsider whether it is in the department's best interest to contract with an attorney who is also an officer in a corporation that holds an on-going contract with the department.

Management's Response:

By contracting with R. Lehman and Associates, Inc., the department was able to assure that citizens would not be disenfranchised due to an inaccessibility of the polling place. A contract for fiscal year 1998-99 was not awarded due to insufficient time to permit inspections and funds are not currently included in the appropriation bill for fiscal year 1999-2000 for the contract. The department must now rely on the local governments to police the situation and is currently in the process of informing each local pollen jury as its equivalent that it will be responsible for assuring the accessibility of every polling place.

Ms. Ann Williamson never reviewed the contract awarded to R. Lehman and Associates in the course of her contractual duties for the department. While Ms. Williamson's contract

may contain a broad definition of her duties, her actual duties have been to provide legal advice and to represent the department in election contests.

Voter Registration Data Provided Without Appropriate Charge

(Page 19)

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| Findings: | The department has provided voter registration data to elected officials and other individuals without charge. State law and department policy require that, except for data provided to registrars of voters and clerks of court, the department charge its actual cost for this service. Records obtained indicate that from January to April 3, 1998, services costing an estimated \$36,077 were provided at no charge. As a result, this revenue was not available to the department to meet its needs and obligations. |
| Recommendation: | We recommend that the department comply with its policy requiring that a fee be charged to recover the costs associated with servicing voter registration data requests. We further recommend that the department institute procedures to record all processed voter list requests and to restrict the use of the test function. |
| Management's Response: | The lists were provided to aid state and other officials in their capacity as government leaders and served in the interests of the state. The department sought and has received a Letter of Advice from the Louisiana Attorney General. Based on the advice of the Attorney General, the department has ceased providing any lists without the appropriate charges. The use of the test function in the commercial request system has been restricted for use only to test programming changes. The department has modified its procedures for producing voter registration lists in order to ensure that all requests are properly recorded and accounted for. |

Director of Information Systems Paid for Time Not Worked

(Page 20)

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| Findings: | Mr. Charles Schatzle, Director of Information Systems, certified on his time and attendance records that he worked 8-hour days when he worked less than 8 hours. As a result, he received compensation for work he did not perform. |
| Recommendation: | We recommend that the department require its employees to record the actual time that they begin and end their workday and |

identify their actual work location on their time sheets. Department supervisors should periodically verify the accuracy of information provided on employee time sheets through personal observation. In addition, we recommend that the District Attorney for the Eastern District of Louisiana review this information and take appropriate legal action, to include seeking restitution.

Management's Response: This employee is facing disciplinary action by the department. In addition, Mr. Schatzle will be required to refund \$3,411 to the department. The department has met with supervisors to emphasize the importance of their personal observations of employees' performance and comparing such to time and attendance reports submitted by employees.

Employees Reimbursed for Lodging and Meals in Violation of State Travel Regulations

(Page 22)

Finding: During fiscal years 1996, 1997, and 1998, the department reimbursed Mr. Ronald Tassin, Elections Director, and Mr. Deane Fields, Assistant Commissioner of Minority Affairs, a total of \$52,511 for travel expenses related to travel from their personal residences to work in the Baton Rouge office in violation of the state travel regulations. Had the department followed the State of Louisiana travel regulations, these expenses may have been avoided.

Recommendation: The department should properly declare the official domicile of Mr. Tassin and Mr. Fields, as well as other department employees, and make all reimbursements for travel in accordance with the state travel regulations.

Management's Response: The department has abided by the recommendation of the Legislative Auditor to have Mr. Tassin and Mr. Fields domiciled in Baton Rouge. In addition, the department has confirmed that no other similar infractions have occurred.

Director of Information Systems Used Public Vehicle and Employee for Personal Use

(Page 24)

Finding: Mr. Charles Schatzle, Director of Information Systems, used a department vehicle and an employee under his supervision to move his personal furniture and possessions from his old residence to his new residence. As a result, the department was

without the use of its vehicle for several days and paid an employee for services not received.

Recommendation:

We recommend that the department prohibit the use of public vehicles and employees for personal use. The department should also take steps to recover any public funds paid to Mr. Jeffries for services not performed. We further recommend that the District Attorney for the Nineteenth Judicial District of Louisiana review this information and take appropriate legal action, to include seeking restitution.

Management's Response:

The department received \$58 as reimbursement for mileage and expenses from Mr. Schatzle. In addition, Mr. Schatzle is facing disciplinary action by the department. The employee who assisted Mr. Schatzle has reimbursed the department \$300 which she was paid for hours not worked and has resigned her position with the department. The department has met with supervisors to emphasize the importance of their personal observations of employees' performance and comparing such to time and attendance reports submitted by employees.

Background and Methodology

The Department of Elections is one of twelve constitutionally established state departments. It was established by Article IV, Section 32 of the Louisiana Constitution of 1874. The Commissioner of Elections, a statewide elected official, is in charge of the department's operations. The current commissioner, Mr. Jerry Fowler, was first elected in 1979 and is now serving his fifth term in the office. The department's budget for fiscal year 1987-88 was \$19,411,421.

The commissioner is charged with the responsibility to exercise all functions of the state relating to the custody of voting machines and voter registration. The major responsibilities of the department include maintaining voting machines for elections, providing support services to hold elections, paying for election expenses, maintaining the statewide voter registration system, and administering the laws regarding registration of voters. These responsibilities are allocated among four separate programs: the Administration Program, the Voting Machine Program, the Registration Program, and the Elections Program.

To fulfill its responsibilities, the department leases warehouses in each of the state's 64 parishes. The department employs 75 full-time and 47 part-time employees to staff these warehouses. These employees keep the machines in good working order and assist during elections. There are approximately 1,500 voting machines stored in the department's warehouses statewide. The department has several different types of voting machines. These include SMOUP and AVM, which are older mechanical machines, and AVC, which are electronic voting machines. The department is currently trying to replace the older mechanical machines with the new AVC electronic machines. These new machines are lightweight and can transmit election data electronically.

The department contracts with several vendors to help meet its varied responsibilities. Among these contractors are Independent Voting Machine Services, Inc., (IVM) whose employees assist the department employees with maintenance of the voting machines and election support. H. Lehman and Associates, Inc., conducts accessibility inspections of the polling locations to ensure that the state's elderly and handicapped voters have adequate access to exercise their voting rights. Software Applications, Inc., assists the department with the data processing requirements of the Voter Registration System. In addition, the department contracts dragage contractors to move the election machines from the warehouses to and from nearly 1,500 precincts during elections.

The procedures performed during this investigative audit consisted of (1) interviewing employees and officials of the department, (2) interviewing other persons as appropriate, (3) examining selected department and contractor records, (4) performing observations and analytical tests, and (5) reviewing applicable state and federal laws and regulations.

The results of our investigation are the findings and recommendations herein.

Findings and Recommendations

DRAYAGE CONTRACTS

The Department of Elections and Registration maintains approximately 8,500 voting machines, which are stored in 85 warehouses throughout the state. These machines are distributed among nearly 1,900 voting precincts during statewide elections. The department enters into agreements (drayage contracts) with contractors to transport voting machines from warehouses to and from the voting precincts. Contracts are issued on an annual basis and are awarded to the lowest responsible bidder through a public bid process. Contractors are paid a flat rate for each round-trip transportation required during the contract period. From 1991 through 1998, the department paid these drayage contractors \$10,048,071.

By contracting these services out, the department has clearly established its intention that private contractors are responsible for the transportation of the voting machines. However, our investigation has revealed that:

1. Drayage contracts were awarded to companies directly associated with Mr. Jim Trichel while he served the department as the Director of Elections.
2. Department employees were actually performing drayage services and being paid by the contractors, in some cases, for the same hours they were paid by the department.
3. An assistant commissioner performed drayage services and rented his personal vehicle to contractors and was paid 50% of the drayage contract amounts for its use.
4. A department employee circumvented Louisiana law to obtain a drayage contract.

DRAYAGE CONTRACTS AWARDED TO COMPANIES ASSOCIATED WITH FORMER DIRECTOR OF ELECTIONS

From 1991 through 1998, the Department of Elections and Registration (Department) entered into drayage contracts and paid Samyde Trucking, Inc., \$460,720 and BEK Enterprises, Inc., \$58,525. Both companies were directly associated with Mr. Jim Trichel while he served the department as Director of Elections.

Mr. Jim Trichel, former state Elections Director, began employment with the department in 1964. Mr. Trichel assumed the position of Director of Elections during 1986, retired his position

in December 1967, was re-employed in April 1968, and currently serves as a part-time voting machine mechanic. According to Mr. Trichel, during his employment with the department, he participated in the awarding of drayage contracts including the distribution of bid packets and opening bids.

Suncoast Tracking, Inc.

From 1991 through 1998, the department paid Suncoast Tracking, Inc., \$448,720 for drayage services. Suncoast was incorporated during October 1988. Ms. Betty Kennedy Trichel, Mr. Jim Trichel's wife, is listed with the Louisiana Secretary of State as Suncoast's Secretary/Treasurer and the corporation's mailing address is Mr. Trichel's personal residence. According to Ms. Trichel, she is a one-third owner of Suncoast along with her brother and his wife. She receives a salary for doing the company's paperwork.

BEK Enterprises, Inc.

From 1996 through 1998, the department paid BEK Enterprises, Inc., \$56,525 for drayage services. BEK was incorporated by Ms. Betty E. Kennedy (Trichel) during 1992. According to Ms. Trichel, BEK is solely her company and she receives all of its profits.

The Louisiana Code of Ethics prohibits department employees from being involved in transactions in which they have a personal, substantial economic interest. The code further prohibits members of department employees' immediate families or corporations in which they have a controlling interest from bidding on or entering into any contract or transaction with the department. Furthermore, the Louisiana Criminal Code prohibits employees from receiving a portion of corporation's profits derived from a department contract or using their positions to cause payments to themselves or their partnerships.

The actions above may be in violation of one or more of the following Louisiana laws:

- R.S. 14:134, "Malfeasance in Office"
- R.S. 14:146, "Public Contract Fraud"
- R.S. 14:141, "Prohibited Splitting of Profits"
- R.S. 42:1112, "Prohibited Transactions Involving the Governmental Entity"
- R.S. 42:1113, "Prohibited Contractual Arrangements"

We recommend that the department ensure that its employees and their family members do not enter into contracts or other transactions with the department. The department should pay particular attention to those employees who, in the course of their duties, participate in the bid award process. The department should ensure that no payments are made to employees, their family members, or related corporations other than those payments related to their official employment. The department should require each employee to certify, on an annual basis, that no prohibited circumstance is in existence and disclose all possible entities in which such a conflict of interest may arise. We further recommend that the District Attorney for the

Mississippi Judicial District of Louisiana and the Louisiana State Board of Ethics review this information and take appropriate legal action, if necessary.

DRAYAGE SERVICES REQUIRED OF CONTRACTORS WERE PERFORMED BY DEPARTMENT EMPLOYEES

The drayage services required by Sunnyside Trucking's contracts for three parishes were actually performed, in part, by department employees and an individual employed by another department contractor while being paid by the department. In addition, the drayage services required by a contract with Mr. Dennis Ludwig were actually performed, in part, by a department employee.

Catahoula Parish

Sunnyside has held the drayage contract for Catahoula Parish from January 1998 through December 1998 at a rate of \$75 per machine. On November 2, 1998, we observed two department employees, Mr. James R. King and his son, Mr. Kirby King, and two unidentified individuals actually performing drayage services for Catahoula Parish using trucks and trailers registered to King's Farm. King's Farm was incorporated by Mr. James R. King. Both department employees submitted time sheets to the department representing that they worked an 8-hour day on November 2, 1998, resulting in the department paying Mr. James R. King \$75 and Mr. Kirby King \$80 in wages. Sunnyside also submitted an invoice for the drayage services associated with the November 1998 election resulting in the department paying Sunnyside \$2,688 for Catahoula Parish. Therefore, the department paid \$2,688 for drayage services in Catahoula Parish that were actually performed by two department employees during their normal work day, while on the department payroll.

According to Ms. Janet Payne, the Catahoula Parish Clerk of Court, Mr. James R. King and/or his two sons have been moving the voting machines in Catahoula Parish for the past 54 years. Mr. Kirby King and Mr. James R. King have been department employees since 1986 and 1964, respectively.

Mr. James R. King stated that he accompanies the draymen to oversee the movement of the voting machines. He refused to comment as to whether the drayage contractor paid him. Mr. Kirby King also refused to tell us whether the contractor paid him.

Caldwell Parish

Sunnyside has held the drayage contract for Caldwell Parish from January 1998 through December 1998. The contract called for a rate of \$88.88 per machine. On November 2, 1998, the day previous to a statewide election, we observed Mr. Toby Trichel and two unidentified individuals performing the drayage services for Caldwell Parish. Mr. Toby Trichel is the son of

Mr. Jim Trichel, the former Director of Elections, and is employed by Independent Voting Machine Services Company, Inc. (IVM), a company which has a contract with the department for voting machine maintenance services. We observed Mr. Toby Trichel using his personal vehicle and a trailer belonging to Trichel & Trichel Farms to transport the voting machines. Mr. Toby Trichel submitted a time sheet to IVM for 8 hours of work on November 2, 1998, and IVM billed the department \$378 for his services and mileage expenses. The department also paid Sunnyside \$2,904 for the transportation of the machines. In addition, DEK paid Mr. Toby Trichel \$850 on November 5, 1998, for contract labor. Therefore, the department paid \$2,904 to Sunnyside Trucking for drayage services that were partially performed by an IVM employee who was also billing the department for his time under a different contract.

Morhouse Parish

Sunnyside was awarded drayage contracts for Morhouse Parish for January 1996 through December 1998 at a rate of \$85 per machine. On October 2, 1998, we observed department employee Mr. Tony Trichel, another son of Mr. Jim Trichel, performing drayage services with two other individuals. These men were using Mr. Trichel's vehicle to move the machines. Mr. Tony Trichel submitted a time sheet for an 8-hour day resulting in the department paying Mr. Tony Trichel \$70 in wages. Sunnyside also submitted an invoice for drayage services associated with the October election resulting in the department paying Sunnyside \$5,895. In addition, Ms. Sandra Thomas, Morhouse Parish Registrar of Voters, stated that she observed Mr. Tony Trichel and Mr. Ronnie Parker, the department's supervisor for the Morhouse warehouse, returning the voting machines to the warehouse on October 4, 1998. Again, department employees were performing the drayage services while at the same time the department was paying a private contractor for these services. This situation is explained in greater detail in a separate finding later in this report.

LaSalle Parish

From 1996 through 1998, Mr. Dennis Ludwig was awarded drayage contracts for LaSalle and Grant parishes. The department paid Mr. Ludwig \$33,600 related to these contracts and for other, special, drayage services. On November 2, 1998, we observed Mr. Kerrie King, a department employee, and two other individuals performing the drayage services for LaSalle Parish. According to the schedule of delivery provided to the LaSalle Clerk of Court, machines were delivered in LaSalle Parish on November 2 from 6:00 a.m. until 4:00 p.m. Mr. Kerrie King submitted a time sheet to the department for 10 hours on this day resulting in the department paying him \$70. The department also paid Mr. Ludwig \$2,180 for drayage services associated with the November election.

According to Mr. Kerrie King, drayage has nothing to do with his job though he has helped with the drayage for the past 6 years and has never taken leave. Mr. Kerrie King refused to answer as to whether the drayage contractor paid him.

The department contracts with private contractors to transport voting machines. Our observations disclosed that department employees are actually transporting the machines and, in one case, an individual whose services are being billed under a contract as a voting machine

mechanic was also transporting voting machines. We recommended that the department reconsider whether it needs outside drayage contractors or whether, in some cases, department employees may be capable of performing these services resulting in savings to the department.

DEPARTMENT EMPLOYEE IMPROPERLY PROFITED FROM DRAVAGE CONTRACTS

From 1996 through July 1998, Sunnyside Trucking, Inc., and BEK Enterprises, Inc., paid department employee Mr. Tony Trichel a total of \$5,540 for contract labor and rental of his personal vehicle in violation of Louisiana law. In some cases, Mr. Tony Trichel was also paid for the same hours by the department.

Sunnyside Trucking was awarded drayage contracts for Madison, Caldwell, Catahoula, and Morehouse parishes while BEK held the contracts for East Carroll and Richland parishes. Records provided show that from 1996 through 1998, all of BEK's revenue and substantially all of Sunnyside Trucking's revenue were derived from contracts with the department. As stated previously in this report, Mr. Betty B. (Kennedy) Trichel, wife of then Director of Elections Jim Trichel, is a partial owner of Sunnyside Trucking and the sole owner of BEK. Mr. Jim Trichel and Ms. Betty Trichel are the parents of Mr. Tony Trichel.

It appears that Mr. Tony Trichel, a department employee since 1994, actually performed drayage services required by Sunnyside Trucking and BEK contracts and was paid by both the department and the contractors. Mr. Tony Trichel is assigned to the Morehouse Parish warehouse and is a voting machine mechanic. From 1996 through July 1998, Mr. Tony Trichel received 16 payments totaling \$5,540 from Sunnyside Trucking and BEK. Notations on the check stubs from the two companies indicate the payments were for contract labor expense and/or equipment rental. In addition, it appears that Mr. Trichel was paid by the department for hours when he was actually performing these drayage services for Sunnyside and BEK. Furthermore, Mr. Trichel claimed and was reimbursed \$297 by the department for his travel expenses incurred on days on which he was also paid by Sunnyside and BEK.

According to the Registrar of Voters in one parish and the Clerk of Court in another parish, Mr. Tony Trichel routinely performs the drayage service in their parishes. Ms. Sandra Thomas, Registrar of Voters for Morehouse Parish for the past 20 years, stated that she has seen Mr. Tony Trichel hauling voting machines to and from area precincts using his personal vehicle. East Carroll Registrar Jimmie Hattaway stated that over the past 3 years, he has seen Mr. Tony Trichel hauling voting machines. In addition, on October 2, 1998, one day before an election, we observed Mr. Tony Trichel make several trips delivering voting machines to area precincts.

A comparison of the records of Sunnyside Trucking, BEK, and the department indicate that Mr. Tony Trichel traveled to area warehouses to represent the department in the shipping and receiving of voting machines and also performed the drayage service of the contractors while being paid by both the department and the contractors for the same hours. For example:

On March 18, 1996, Sunnyside paid Mr. Tony Trichel \$690. Noted on the check stub was "Contract Labor Expense 3/12/96 haul-Rent of Equip." and "Contract labor by job - 3/12/96" was noted on the back of the check. On March 12, 1996, the Presidential Primary was held and required hauling machines to all precincts. According to the contract, machines were hauled to the precincts on March 11, and returned to the warehouse on either March 13 or March 14. Mr. Trichel's time and attendance report indicates that he worked at the Monroe warehouse 8 hours on March 11, 16 hours on March 12 (Election Day), 8 hours on March 13, and 8 hours on March 14. His expense report shows the following:

- March 11 (day before the election), at 8:00 a.m., he traveled from Monroe to Lake Providence (East Carroll Parish) and returned to Monroe by 5:00 p.m. His expense report indicates "shipping" on this day and he was reimbursed \$39.84.
- March 12 (Election Day), from 5:00 a.m. to 9:30 p.m., he traveled from Monroe to Lake Providence to several precincts and back to Monroe and he was reimbursed \$59.52.
- March 13, from 8:00 a.m. to 5:00 p.m., he traveled from Monroe to Lake Providence and returned to Monroe. His expense report indicates "receiving" on this day and he was reimbursed \$39.84.

By his indication of "shipping" and "receiving," it appears the machines were hauled to and from the precincts on March 11 and March 13. Sunnyside's invoice for hauling machines in East Carroll Parish was signed "Tony Trichel" as specialist-in-charge, demonstrating that he was present. Therefore, it appears that Mr. Trichel traveled to East Carroll Parish to represent the department and also performed the services of the drayage contractor and was paid by both the department and Sunnyside.

On another occasion, April 21, 1996, Sunnyside Trucking paid Mr. Tony Trichel \$350. Noted on the check stub was "Contract labor expense-Monroe/Rent of Equipment." On Saturday, April 20, 1996, an election was held in Monroe Parish. According to the contract, machines were hauled to the precincts on April 19, and returned to the warehouse on either April 21 or April 22. Mr. Trichel's time and attendance report indicates that he worked at the department's Monroe Parish warehouse 8 hours on April 19; 18 hours on Election Day, April 20; 8 hours on April 21; and 8 hours on April 22.

Mr. Tony Trichel informed us that he has never hauled voting machines for drayage contractors. He explained that he has traveled to the precincts but that he has never moved the voting machines. Mr. Tony Trichel stated that the payments from Sunnyside Trucking and HEK were for the rental of his truck, not for moving voting machines.

According to Mr. Tony Trichel, the checks also prepared for Mr. Tony Trichel from HEK's accounts were for repairs he made to their firm equipment. As noted previously, several of the checks have notations specifically referring to elections.

By receiving payments from a contractor that were derived from a contract with the department and by performing services for and being compensated by a contractor while also being paid,

for the same hours, by the department, Mr. Tony Trichel may have violated one or more of the following Louisiana laws:

- R.S. 14:133, "Filing False Public Records"
- R.S. 14:134, "Malfeasance in Office"
- R.S. 14:141, "Prohibited Splitting of Profits"
- R.S. 42:911(B)(2)(d), "Prohibited Receipt of Compensation From Vendor"

We recommend that the department establish and implement a policy that prohibits its employees from deriving profits from any agreement or contract to which the department is a party. The department should make it clear to its employees their responsibilities and duties during the shipping and receiving of voting machines. In addition, the department should revise its time and expense reporting to include specific details as to the location, time, and services performed by each warehouse employee. Since the Registrar of Voters in one parish and the Clerk of Court in another parish were aware that Mr. Tony Trichel was involved with the delivery of voting machines, his supervisor should have also been knowledgeable of this and taken appropriate action. The department should require that supervisors periodically observe the activities of its warehouse employees and compare their observations to the time and attendance reports and expense reports submitted. Furthermore, the department should review its drayage policies and procedures to ensure the appropriate use of taxpayer dollars.

We further recommend that the District Attorney for the Western Judicial District of Louisiana and the Louisiana State Board of Ethics review this information and take appropriate legal action, to include seeking restitution.

ASSISTANT COMMISSIONER IMPROPERLY PROFITED FROM DRAYAGE CONTRACTS

Mr. Bruce Fields, Assistant Commissioner for Minority Affairs, received \$9,796 from drayage contracts with Suncoast Trucking, Inc., and BEK, Inc., two companies contracted by the department to haul voting machines to and from voting precincts.

Mr. Fields began his employment with the department in 1983 as a voting machine mechanic. Since January 1994, Mr. Fields has served the department as assistant commissioner for minority affairs. From March 1996 through May 1998, Suncoast and BEK paid Mr. Fields a total of \$9,796 representing one-half of the amounts paid to Suncoast for specific elections. Notations in the companies' books indicate the payments were for contract labor and rental of equipment for Madison Parish elections. Mr. Fields received seven such payments as follows:

Department Payments to Sunnyside		Sunnyside/BRK Payments to Mr. Fields		
Date	Amount	Date	Amount	
March 16, 1998	\$1,316	March 16, 1998	14,658	50%
April 29, 1998	3,239	April 29, 1998	1,419	30%
September 30, 1998	3,476	October 3, 1998	1,758	80%
November 15, 1998	3,397	November 18, 1998	1,589	50%
October 26, 1999	3,397	October 31, 1999	1,589	50%
April 17, 1998	1,333	April 17, 1998	1,066	30%
May 8, 1998	621	May 11, 1998	318	80%
Total	<u>\$15,381</u>	Total	<u>38,796</u>	

Each of the checks paid to Mr. Fields was signed by Ms. Betty E. Kennedy (Betty Trichel), wife of Mr. Jim Trichel, the former Director of Elections. The department's drayage contracts for Madison Parish were with Sunnyside Trucking. Though Sunnyside and BRK are separate corporations, the checks paying Mr. Fields were drawn on both corporations. All of BRK's revenues and substantially all of Sunnyside Trucking's revenues were derived from the department.

According to Mr. Fields, he rented one truck and trailer to Sunnyside for voting machine drayage. Mr. Fields stated that his legal counsel advised him that his renting of equipment to Sunnyside was above board. Mr. Fields refused to answer any further questions regarding this matter, referring us to his legal counsel.

Though Mr. Fields states that these payments were for rental of his truck and trailer, Sunnyside could have rented a suitable truck from a commercial rental company for considerably less than the amounts paid to Mr. Fields. We noted that, after the beginning of our investigation, Sunnyside Trucking stopped making payments to Mr. Fields and rented vehicles for its Madison Parish drayage work. Typically, drayage for a specific election involves hauling on two days - the day previous to the election and one day after the election. Though Sunnyside normally paid Mr. Fields approximately \$1,750 for rental associated with a parishwide election, records received from Sunnyside indicate that the corporation rented a truck for \$465 to perform the drayage associated with the November 3, 1998, election. In addition, several individuals responsible for polling places in Madison Parish have informed us that Mr. Fields delivered their voting machines.

If receiving a portion of the profits derived from a department contract, Mr. Fields may have violated one or more of the following Louisiana laws:

- R.S. 14:134, "Malfeasance in Office"
- R.S. 14:140, "Public Contract Fraud"
- R.S. 14:141, "Prohibited Splitting of Profit"
- R.S. 42:1114(K)(2)(b), "Prohibited Receipt of Compensation From Vendor"

We recommend that the department prohibit its employees from participating in transactions with and receiving compensation from department contractors. The department should require that each employee annually disclose all possible conflicts of interest and certify that they have complied with the Louisiana Code of Ethics and other state law. We further recommend that the District Attorney for the Nineteenth Judicial District of Louisiana and the Louisiana State Board of Ethics review this information and take appropriate legal action, to include seeking restitution.

DEPARTMENT EMPLOYEE IMPROPERLY RECEIVED DRAYAGE CONTRACT

From 1995 through 1998, Mr. James R. King, a department employee, received \$123,269 through a drayage contract entered into on his behalf by an attorney, Mr. Hal Scott. Though Mr. King participated in the contract before 1995, records have not been provided to determine the amount he previously received.

From 1991 through 1998, the department paid Mr. Hal Scott, an attorney, \$284,898 for drayage services. According to Mr. Scott, before his entering into the contracts, Mr. James R. King, a department employee, told him that the department had a new regulation prohibiting him from obtaining a drayage contract and requested that he (Scott) obtain the contracts and allow Mr. King to perform the services. Mr. James King was originally employed by the department during 1984, retired during 1989, was rehired and currently serves as a part-time warehouse mechanic. Mr. Scott stated that he simply signs his name to the bid form and Mr. James King does everything else from preparing the bid amount to providing the manpower and equipment. It should be noted that the department's drayage contracts specifically state that they shall not be sold, transferred, or subject to a third party without written approval of the Commissioner of Revenues. The department provided no such written approval. According to Mr. Scott, whenever he receives a check from the department, he deposits it into his client trust account and writes a check for the identical amount payable to either Mr. James King or King's Farm. Mr. Scott provided records from this account for the period 1995 through 1998. During this period, the department paid \$124,799 to Mr. Scott and he wrote checks payable to King's Farm totaling \$123,269. Mr. Scott could not locate a payment to James King or King's Farm for the remaining \$1,530 he received from the department.

The Louisiana Code of Ethics prohibits department employees from being involved in transactions in which they have a personal, substantial economic interest. The Louisiana Criminal Code prohibits contractors from giving and public employees from receiving money derived from state contracts. The Criminal Code also prohibits employees from using their position or power to cause payments to themselves. By obtaining department funds through a contract entered into in this manner, Mr. James King may have violated one or more of the following Louisiana laws:

- R.S. 14:134, "Malfeasance in Office"
- R.S. 14:140, "Public Contract Fraud"
- R.S. 14:141, "Prohibited Profit Splitting"
- R.S. 42:1112, "Prohibited Transactions Involving the Governmental Entity"
- R.S. 42:1113, "Prohibited Contractual Arrangements"

This situation was caused by the agreement of a department employee and contractor and would not ordinarily be detected by management. Because of this situation, and the fact that employee involvement in the drayage contracts is prevalent, we recommend that the department require each drayage contractor to submit a list of individuals who have ownership interest in the contractor entity and a list of those individuals that will be involved in performing the drayage services. We further recommend that the District Attorney for the Nineteenth Judicial District of Louisiana and the Louisiana State Board of Ethics review this information and take appropriate legal action, to include seeking restitution.

WAREHOUSE CONTRACTS AWARDED TO DEPARTMENT EMPLOYEES IN VIOLATION OF CODE OF ETHICS

The department awarded contracts to two employees, Mr. James Kirby King, and Mr. James B. King, and to the wife of then Director of Elections, Mr. Jim Teichel, for the rental of storage warehouses. The department paid \$121,433 in rental payments through these contracts. The Louisiana Code of Ethics prohibits employees and their family members from entering into such contracts with the department.

The department contracts with warehouse owners throughout the state to lease warehouse space for the storage of voting machines in each of the state's 64 parishes. Louisiana law (R.S. 33:3443) requires that every lease for the use of 5,000 square feet or more of space in a privately owned building must be awarded by competitive sealed bidding. Those less than 5,000 square feet are not required to be competitively bid. The department entered into lease agreements, for warehouse space less than 5,000 square feet, with two department employees and the wife of the Director of Elections.

Mr. James Kirby King

The department entered into a lease agreement with Mr. James Kirby King (Kirby King and son of James B. King), for the period August 1985 through July 1987, for a warehouse located in Caliboula Parish at a rate of \$525 per month. The department has renewed this contract annually through July 1994 and paid Mr. Kirby King \$50,400. Mr. Kirby King has been employed by the department since August 1985.

Mr. James R. King

The department entered into a lease agreement with Mr. James R. King (James King and father of Kirby King) for the period August 1994 through July 1995 for the same warehouse in Calcasieu Parish at a rate of \$924 per month. The department has continued to pay under this lease through December 1995 and has paid Mr. James King a total of \$34,434. Mr. James King was originally employed by the department during 1984, retired during 1985, was immediately re-employed on a part-time basis and continues to serve as a part-time employee.

BEK Enterprises, Inc.

During July 1992, the department entered into a contract with BEK Enterprises, Inc., for 1,680 square feet of warehouse space located in Tangas Parish at a rate of \$444.29 per month with annual adjustments for increases in the consumer price index. The department has paid BEK a total of \$36,583 through December 1998.

BEK was incorporated by Mrs. Betty E. Kennedy's Trichel in June 1992. Mrs. Trichel is the wife of then Director of Elections, Mr. Jim Trichel. Mr. Jim Trichel was employed by the department in 1964, became the Director of Elections in 1984, and retired on December 31, 1992. On April 25, 1998, the department re-employed Mr. Trichel as a part-time voting machine technician. According to department records, Mr. Trichel remains classified as a part-time employee. As Director of Elections, Mr. Trichel supervised voting machine operations throughout the state, including Tangas Parish. The warehouse, which is located on Holly Street in St. Joseph, Louisiana, was previously owned by Natera, Inc., who held the warehouse contract with the department from 1984 through June 1992. A cash deed, executed on March 25, 1992, shows that Mrs. Trichel purchased the property for \$4,000 in her maiden name, Mrs. Betty E. Kennedy. According to Mr. Trichel, she used her maiden name to be independent of her husband.

The above actions indicate possible violations of the following Louisiana laws:

- R.S. 14:134, "Misfeasance in Office"
- R.S. 14:1112, "Participation in Certain Transactions Involving the Governmental Entity"
- R.S. 42:1113, "Prohibited Contractual Arrangements"
- R.S. 42:1451, "Obligation Not to Misuse Public Funds"

We recommend that the department prohibit its employees from entering into contractual relationships with the department and implement policies and procedures to prevent future occurrences. We further recommend that the District Attorney for the Nineteenth Judicial District of Louisiana and the Louisiana State Board of Ethics review this information and take appropriate legal action, to include seeking restitution.

EMPLOYEE TIME AND ATTENDANCE REPORTS DISAGREE WITH OBSERVATIONS OF INVESTIGATIVE AUDITOR

The time and attendance and expense reports for three department employees indicated that they were working during certain times and at specific locations that do not agree with observations of investigative auditors. On certain occasions, department employees were observed engaged in personal activities during their normal work hours.

The department maintains 63 parish warehouses throughout the state. The department employs 75 full-time and 47 part-time voting machine mechanics that are assigned to these warehouses to perform routine maintenance and other functions. These employees complete and file bi-weekly time and attendance reports and expense reports that are signed by each employee and their supervisor. The time and attendance reports indicate their work location and, for each day, the total number of hours worked and any annual, compensatory, or sick leave taken. This form provides only one opportunity for the employees to report their work location. The standard time and attendance report does not provide a place for the employees to report situations where they work at multiple locations. The standard form also requires that the employees report only their total hours worked each day. It does not require that the employees report their actual beginning and ending time of work.

Voting machine mechanics are assigned to specific parish warehouses. Whenever mechanics are required to travel to other than their assigned warehouses, they are reimbursed travel expense. The employees' expense reports, signed by the employee and their supervisor, indicate the location to which they traveled and any reimbursable expenses incurred.

During September, October, and November 1998, we observed the activities of several voting machine mechanics and compared our observations to each employee's time and attendance reports and expense reports. For three employees, our observations did not agree with the information that they reported on their time and attendance and expense reports as follows:

Mr. Ronald Parker

Mr. Ronald Parker is an Elections Supervisor. His normal work hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday. Mr. Ronald Parker is assigned to the Miscellaneous warehouse located in Thibodaux, Louisiana. We observed Mr. Parker's activities on 10 days. We certified on his time and attendance reports that he worked 8 hours on each of these days. Our observations indicate that he was not working at the location listed on his time and attendance reports for at least 27 of the 80 hours reported. During times that Mr. Parker was not working at the locations listed on his time and attendance report, he was observed at his home, McDonalds, a bank, a pharmacy, a car wash, and conducting personal errands. (See Appendix B1 for detail of observations.) No documentation was provided in explanation of these discrepancies.

During an interview on January 5, 1999, Mr. Ronald Parker stated three times that the hours on his time and attendance reports were factually correct and that he recorded all activities worked. After we informed him that we had observed his activities on certain days, he stated that he had worked overtime hours that he did not report on his time and attendance reports and that these unreported hours would balance with the hours that he recorded but did not work.

Mr. Jessie Parker

Mr. Jessie Parker is a part-time voting machine mechanic. Mr. Jessie Parker is assigned to the Ouachita Parish warehouse located in Monroe, Louisiana. We observed Mr. Jessie Parker for one day, October 22, 1998. He certified he worked 8 hours on his time and attendance report. Our observations indicate that he was not working at the location listed on his time and attendance report for at least 5 of the 8 hours reported. Mr. Jessie Parker arrived at the warehouse at 8:30 a.m., left for lunch at 11:30 a.m., returned to the warehouse at 12:00 p.m., and left for the day, with Mr. Ronald Parker, at 12:30 p.m. During the afternoon, we observed Mr. Jessie Parker make stops at a tractor dealer, bank, pharmacy, car wash, Southern fittings, and a Honda dealer.

Mr. Jessie Parker stated he did not recall recording hours that he did not work. There might be 25 minutes to an hour that he recorded on his time and attendance reports as worked where he made personal errands. On February 24, 1999, Mr. Jessie Parker informed us that the destinations that he and Mr. Ronald Parker traveled to on October 22, 1998, were not related to department business.

Mr. Tony Trichel

Mr. Tony Trichel is an Elections Specialist Leader assigned to the Morehouse Parish warehouse. His normal work hours are 8:00 a.m. to 3:00 p.m., Monday through Friday. We observed Mr. Trichel's activities on 6 days. He reported that he worked 8 hours on each of these days for a total of 48 hours and did not report any expenses for travel to other warehouses. Our observations indicate that he was not working at the Morehouse Parish warehouse for at least 33 of these 48 hours. (See Appendix III for detail of observations.) No documentation has been provided to explain these discrepancies.

During an interview on January 5, 1999, we asked Mr. Trichel whether he had ever recorded 8 hours on his time and attendance reports but did not work the 8 hours. He responded "no." He stated that his time and attendance reports and his expense reports are correct. Later, Mr. Tony Trichel informed us that he may not have worked at Morehouse Parish warehouse on the days questioned. Instead, he may have worked at other warehouses and failed to claim travel expenses for those occasions.

As discussed above, the three employees' time and attendance and expense reports did not agree with the observations of the investigative auditors. For certain situations where the employees were not present at the warehouse listed on their time and attendance reports, the employees may

have actually worked at another location. However, for Mr. Ronald Parker and Mr. Jessie Parker on October 23, 1998, and Mr. Ronald Parker on October 23 and November 18, 1998, our observations indicate that these gentlemen were not performing services for the department but were engaged in personal activities.

The actions of Mr. Ronald Parker and Mr. Jessie Parker indicate possible violations of the following Louisiana laws:

- R.S. 14:134, "Malfeasance in Office"
- R.S. 14:138, "Public Payroll Fraud"
- R.S. 42:1481, "Obligation Not to Misuse Public Funds"

The department should implement procedures to ensure that voting machine mechanics report the actual location and hours that they work on a daily basis. The department should revise its time and attendance report to require employees to maintain a detailed record of their activity to include arrival and departure times, locations worked, and duties performed. In addition, the department supervisors should periodically compare the information provided by employees on their time and attendance reports to the supervisors' personal observations. We further recommend that the District Attorney for the Nineteenth Judicial District of Louisiana review this information and take appropriate legal action, to include seeking restitution.

DEPARTMENT SHOULD RECONSIDER CONTRACT FOR INSPECTION SERVICES

From October 1998 through June 1999, the department paid B. Lehman and Associates, Inc., \$465,148 to perform accessibility inspections of polling places, voting machine warehouses, and the offices of Registrars of Voters. We noted the following:

1. The obligation to ensure accessibility resides with local government not the department.
2. The majority of polling places are located in public buildings that are already required to be accessible, and for those polling places most at risk, the contractor is performing a limited inspection.
3. Department officials responsible for supervising the contract were not aware that all polling places were not being inspected annually.
4. An owner of B. Lehman and Associates is also a department contract attorney.
5. B. Lehman and Associates' employee who performs the inspections is the husband of the department's Director of Registration.
6. At the contract rate, it appears that the department is paying approximately \$553 per polling location that may have been inspected.

There are 3,880 voting precincts housed in 2,434 different locations in the State of Louisiana. State law requires that the local governing authority (police jury, parish council) of each parish select the polling locations for its parish. Polling places shall be located in public buildings, and in the absence of available space, in private property. Louisiana's polling places are located predominantly in public buildings.

The Federal Voting Accessibility for the Elderly and Handicapped Act, 42 USC §1973ee, (enacted 1984) requires that polling places be accessible to the elderly and handicapped and that local governments provide assurances that such access exist. Before 1994, the chief election officer of the state was required to report the number of accessible and inaccessible polling places to the Federal Election Commission. To fulfill this reporting requirement, the department, in 1986, promulgated rules establishing criteria to be used in determining accessibility and required that the local governing authorities perform surveys of polling locations to determine whether the locations were in compliance with the established criteria. In 1990, the Americans with Disabilities Act (ADA) was signed into law. The ADA is wide-ranging legislation intended to make the American society more accessible to people with disabilities. In 1994, Louisiana adopted the ADA Accessibility Guidelines, which provide the technical requirements for accessibility to be applied during the design, construction, and alteration of public and publicly used buildings and facilities.

The department contracted a private consulting firm to ensure that polling places in Louisiana are in compliance with state and federal laws and regulations. In 1990, the department entered into annual contracts with B. Lehman and Associates (Lehman), a Baton Rouge based management and governmental consulting firm operated by Mr. B. Lehman Williamson. These contracts required that Lehman:

1. Perform on-site inspections of new polling places
2. Re-inspect all polling locations previously found to be inaccessible
3. Advise local elections officials as to the steps necessary to bring polling locations into compliance with ADA.

From October 1990 through June 1998, the department paid Lehman \$385,148. In addition, during 1993 and 1995, the department contracted Lehman to perform accessibility inspections of voting machine warehouses and registrar of voter offices. Under these contracts, the department paid Lehman an additional \$78,800.

Mr. Don Truly, an employee of Lehman, was responsible for Lehman's performance on the 1991/98 contract. Mr. Truly is the spouse of the department's current Director of Registration, Ms. Gayle Truly. According to Mr. Truly, he performed all inspections except for some polling places located in New Orleans. For the New Orleans polling locations, Mr. Truly used the assistance of a part-time Lehman employee. According to Mr. Truly:

1. He does not inspect all polling places in the state each year and this is not required by Lehman's contract.

2. He inspects new precinct locations and not existing locations that have no prior compliance problems.
3. He typically does drive-by inspections of residential locations.
4. Public buildings, by federal regulations, have to be in compliance with the ADA, so there is no need for inspection.
5. In public buildings such as schools and fire departments, he does not inspect the actual location where voting machines are placed in the buildings, he assumes that they will be in an accessible area.
6. He does not make any record of his inspections.
7. He inspected at least 500 precinct locations during the 1993-98 contract.

Mr. Truly could not provide any records or notes of his inspections to substantiate that the inspections were actually performed. Mr. Truly stated that they generate no records and the department does not require them to keep records. Lebrun does provide the department monthly billings, progress reports, and annual reports, which describe the results of the work performed.

Although Mr. Truly stated that he inspected at least 500 locations during 1993-98, the department's Electronic Elections Manager, who is responsible for tracking polling place changes, stated that there were about 80 changes in polling places during 1993-98, 52 of which were located in public facilities.

In an effort to substantiate the work performed by Lebrun, Mr. Truly provided a sworn affidavit. In his affidavit, he stated that Lebrun inspects each new polling location each year and those polling locations for which the department or local officials have expressed concern.

The need for inspections appears to be minimal. Polling place location changes are made initially by the parish governing authority and the Registrar of Voters in each parish. According to the department's records, from July 1994 through June 1998, registrars submitted approximately 345 change requests for polling places. Of those requests, 224 resulted in polling places being located in public buildings such as municipal offices and public schools. Fifty-eight polling places were located in community centers, senior citizens' homes, church facilities, and private schools. Thirty-one polling places were located in business establishments. The remaining 12 locations were residential properties. Therefore, if all polling place changes resulted in an inspection, then 145 inspections were required. However, only 121 locations, or approximately 34 per year, were non-public (governmental) buildings and actually required inspection. In addition, Lebrun's progress reports routinely state that there were no accessibility complaints received by the department, again demonstrating a minimal need for further inspections.

Department officials responsible for supervising the contract were apparently unaware that all polling locations were not being inspected annually. Department officials have repeatedly made statements to legislative committees and the Division of Administration indicating that Lebrun was inspecting all of Louisiana's polling places for its \$40,000+ annual contract. Dr. Alan Elkin, First Assistant Commissioner, was responsible for the supervision of the contract with

Lehman from its onset until July 1996. From July 1996 to June 1998, the Assistant Commissioner of Minority Affairs, Mr. Dennis Fields, was responsible for the supervision of the contract. On September 21, 1998, Dr. Elkins, who is Mr. Fields' supervisor, testified before the Commission for the Review and Improvement of Services Procurement (CRISP) that Lehman inspects each polling place every year. On October 21, 1998, Dr. Elkins testified before a joint meeting of the House and Governmental Affairs and Senate and Governmental Affairs Committees. During that testimony, Dr. Elkins again stated that Lehman inspects each of the polling places every year. Dr. Elkins informed us that he thought each precinct location was being inspected every year and that this was the intent of the contract.

Mr. Fields was not fully aware of the requirements of the Lehman contract. When questioned, Mr. Fields first stated that Lehman does not inspect all polling locations each year. Later, he stated that he did not know whether Lehman inspected all polling places each year. Mr. Fields admitted that he was not fully aware nor had he fully read and understood the requirements of the contracts. Mr. Fields later stated that he thought the department's expectation was that Lehman was inspecting locations that the department informed Lehman were new changes in polling places.

Commissioner Fowler was also not aware of Lehman's performance on these contracts. In a letter to the Commissioner of Administration dated November 18, 1998, Commissioner Fowler stated that Lehman visits each polling place annually. Commissioner Fowler also stated that Mr. Fields works closely with Lehman and supervises the contract for the department. This letter was attached as support for the 1998-99 Lehman contract and forwarded to the Division of Administration for approval. On November 19, 1998, during testimony before the CRISP committee, Commissioner Fowler stated that Lehman employs eight inspectors, and they inspect each polling place annually.

In addition, an attorney under contract to the department to, among other things, review contracts is an officer of R. Lehman and Associates, Inc. Ms. Ann Williamson, the daughter of Lehman Williamson, is the vice president, owner, and a registered lobbyist for Lehman. Ms. Williamson has completed two contracts and currently has a third contract with the department. The current contract, effective August 20, 1998, defines in part, the scope of her services as follows: "All contracts let by the agency would be reviewed as to form and content. The Counsel would recommend changes as they are necessary." According to Ms. Williamson, she has never been asked to review any contracts. Ms. Williamson confirmed that Mr. Don Tredy was responsible for Lehman's performance under the 1991-98 contract.

As mentioned previously, the department also paid Lehman \$79,800 to inspect voting machine warehouses and the offices of the Registrars of Voters. The department's warehouse contracts that we reviewed require the owners' assurance of compliance with accessibility requirements. In addition, department employees staff the 65 parish warehouses. As for the registrars of voters, these are locally elected officials normally housed in the parish courthouses.

The requirements to provide accessible polling places lies with the local government, not the Department of Elections and Registration. The department's rules require that local governments survey for polling locations and report the results to the department. It is clear

from a review of the contract that Lohman is only required to inspect new polling locations, not every polling location annually. Though there are, on average, 85 polling location changes per year, many of these relocations are to public buildings such as schools and fire departments that are already required to meet accessibility requirements. For residences that pose the greatest risk of not being accessible, the contractor performs only a drive-by inspection. Furthermore, a review of Lohman's annual report to the department for 1998 reveals that only 15 polling places did not meet accessibility requirements, each of them for inadequate parking designations.

Based on the information provided to us during this investigation, it appears that approximately 30 locations require inspection on an annual basis. At an average of \$47,671 per year, this would indicate the department is paying \$1,289 per inspection. Even if Lohman were to inspect all location changes each year, the department would still be paying approximately \$553 per inspection.

We recommend that the department reconsider its contract with R. Lohman and Associates and consider alternative methods to ensure that the state's polling places are accessible to our handicapped and elderly citizens. These alternatives might include:

1. Requiring each parish governmental authority to annually certify that all polling locations are in compliance with the accessibility requirements
2. Posting notices regarding accessibility requirements at polling locations and maintain records of complaints and corrective measures taken
3. Using services of department employees located throughout the state to perform any inspections that may be required

Should the department determine that this contract continues to be necessary, we recommend that the contractor be required to prepare and submit:

1. A list of individuals, and their qualifications, that will be performing the inspection services
2. Inspection reports for each polling location examined including the date and time of the inspection, the specific compliance items observed, items of non-compliance noted, and the certification of the examiner as to the truthfulness of the report
3. Correspondence or other evidence of communication with local election officials when providing advice on accessibility issues

In addition, we recommend that the department reconsider whether it is in the department's best interest to contract with an attorney who is also an officer in a corporation that holds an on-going contract with the Department.

VOTER REGISTRATION DATA PROVIDED WITHOUT APPROPRIATE CHARGE

The department has provided voter registration data to elected officials and other individuals without charge. State law and department policy require that, except for data provided to registrars of voters and clerks of court, the department charge its actual cost for this service. Records obtained indicate that from January to April 3, 1998, services costing an estimated \$36,077 were provided at no charge. As a result, this revenue was not available to the department to meet its needs and obligations.

The department maintains a database of individuals registered to vote in the state of Louisiana. State law (R.S. 18:172) requires that the department provide, free of charge, voter lists to the registrars of voters and clerks of court. State law further provides that all others shall pay such actual costs as may be imposed by the commissioner of elections. Department policy provides that "There is no charge for a list or label requested by a Registrar for use within the Registrar's office. There is a charge for all other requests. This includes requests from elected and appointed officials." Department policy includes a cost schedule detailing the appropriate charges for registration data provided through various media such as lists, labels, magnetic tape, and floppy disk.

Though not in accordance with its policy, the department routinely provides registration data to elected officials and other individuals without charge. According to a department employee's handwritten log, from January 5 to April 3, 1998, the department received at least 87 requests for such information. The estimated cost to service these requests was \$31,398. However, the department could first corresponding billings for only 46 of these requests totaling \$15,321. The remaining estimated costs of \$36,077 were not charged to the requesting parties.

When data requests are processed, the operator is required to indicate whether a fee is to be charged, and if so, the proper amount. This information is then captured into the department's accounting system and an invoice is generated. Alternatively, the operator may indicate that the request is a "test" thereby allowing the system to generate the requested data without generating an invoice. It is this test function that has been used by department officials to circumvent essential accounting controls.

We recommend that the department comply with its policy requiring that a fee be charged to recover the costs associated with servicing voter registration data requests. We further recommend that the department institute procedures to record all processed voter list requests and to restrict the use of the test function.

DIRECTOR OF INFORMATION SYSTEMS PAID FOR TIME NOT WORKED

Mr. Charles Schatzle, Director of Information Systems, certified on his time and attendance records that he worked 8-hour days when he worked less than 8 hours. As a result, he received compensation for work he did not perform.

	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun
June 10	Off	Off				All Work							Bayou Cajun Café								Off
June 11	Off				No Work								Bayou Cajun Café						No Work		
June 12	Off				All Work								Sammy's Grill						All Work		
June 13	Off				All Work								Bayou Cajun Café						All Work		Off
July 1	Off				No Work								Sammy's Grill						All Work		Off
July 2	Off				All Work								Bayou Cajun Café						All Work		Off
July 3	Off				All Work								Bayou Cajun Café						All Work		Off
July 4	Off				All Work								Bayou Cajun Café						All Work		Off
July 5	Off				All Work								Bayou Cajun Café						All Work		Off
July 6	Off				All Work								Bayou Cajun Café						All Work		Off
July 7	Off				All Work								Bayou Cajun Café						All Work		Off
July 8	Off				All Work								Bayou Cajun Café						All Work		Off
July 9	Off				All Work								Bayou Cajun Café						All Work		Off

** On June 17, Schatzle worked until 8:30 p.m.

As Director of Information Systems, Mr. Schatzle is responsible for directing and monitoring the spending and programming functions of data processing. Mr. Schatzle is required to work 40 hours per week and earn annual and sick leave for the purposes of paid absences. According to Mr. Schatzle, his work hours are 8:00 a.m. to 4:30 p.m., with a 30-minute lunch break. Mr. Schatzle prepares a bi-weekly time sheet certifying the number of hours actually worked and any leave taken.

During the months of June and July 1998, we observed Mr. Schatzle's activities for 10 days on which he was not on leave. On the 10 days, he recorded on his time sheet that he worked 80 hours when he actually only worked 38½ hours and was away from his job 41½ hours:

1. June 16 - Mr. Schatzle arrived at work at 9:30 a.m., left at approximately 12:00 p.m. and traveled to the Bayou Cajun Café, took a 3-hour break and returned to work at 3:00 p.m. He left for the day at 4:30 p.m. Therefore, he worked only 4 hours, 4 hours short of his workday.
2. June 17 - Mr. Schatzle arrived at work at approximately 9:30 a.m. At 11:30 a.m., he left the department and traveled to the Bayou Cajun Café, took a 2½-hour break and returned to the department at 2:20 p.m. He left for the day at approximately 5:15 p.m. Therefore, he worked for approximately 5 hours, 3 hours short of his workday.
3. June 18 - Mr. Schatzle arrived at work at approximately 9:00 a.m. At approximately 12:00 p.m., he left work and traveled to Sammy's Grill, took a 1½

hour break and returned to the department at 1:45 p.m. Mr. Schatzle concluded his workday at 4:30 p.m. Therefore, he worked for approximately 6 hours, 2 hours short of his workday.

4. June 19 - Mr. Schatzle left his home at 8:40 a.m. and arrived at work at 9:08 a.m. At approximately 11:38 a.m., he left work and traveled to Bayou Cajun Café. He left Bayou Cajun Café at 4:00 p.m. and returned to his home. Therefore, he worked 2½ hours, 5½ hours short of his workday.
5. July 7 - Mr. Schatzle arrived at work at approximately 1:15 p.m. At approximately 3:15 p.m., he left work and returned home. He worked 2 hours, 6 hours short of his workday.
6. July 8 - Mr. Schatzle arrived at work at approximately 9:00 a.m. He left work at 11:45 a.m., traveled to Sammy's Grill, and returned to the department at 1:15 p.m. He left for the day at 3:30 p.m. Therefore, he worked 5 hours, 3 hours short of his workday.
7. July 9 - Mr. Schatzle arrived at work for 9:30 a.m. He left work at 12:00 p.m., traveled to the Bayou Cajun Café and returned to the department at 1:30 p.m. He concluded his workday at 4:30 p.m. Therefore, he worked 3½ hours, 2½ hours short of his workday.
8. July 10 - Mr. Schatzle arrived at work at approximately 9:45 a.m. He left work at 12:40 a.m. and traveled to Fleur De Les Restaurant & Lounge. He left Fleur De Les at 2:00 p.m. and traveled to the Bayou Cajun Café. He did not return to work on this day. Therefore, he worked for approximately 2 hours, 6 hours short of his workday.
9. July 14 - Mr. Schatzle arrived at work at 9:30 a.m. He left work at 11:20 a.m., traveled to the Bayou Cajun Café, and remained there for 2½ hours. He returned to the department at 2:00 p.m. and left for the day at 3:15 p.m. Therefore, he worked for 3½ hours, 4½ hours short of his workday.
10. July 15 - Mr. Schatzle arrived at work at approximately 9:00 a.m. He left the department at 11:00 a.m. and returned at 1:30 p.m. He left for the day at approximately 3:30 p.m. Therefore, he worked for 4 hours, 4 hours short of his workday.

During the 10 days of observation, Mr. Schatzle was away from his job a total of 61½ hours with no leave taken. As a result, he was paid \$1,411 that he was not entitled to receive.

According to Mr. Schatzle, during the past three months, he has been unable to work 40-hour weeks because of office pressure. He stated that he knew he should not have reported hours worked on his time sheet that he did not actually work. He stated further that he should not have signed time sheets that reflected 40-hour work weeks when he did not actually work 40 hours. He estimated that during May through July 1988, he has worked approximately 20 hours per week in the office and 8 hours per week at his home. Based on Mr. Schatzle's own estimate, he may have received \$8,175 for time he did not work.

These actions indicate possible violations of the following Louisiana Laws:

- R.S. 14:63, "Theft"
- R.S. 14:134, "Malfeasance"
- R.S. 14:138, "Payroll Fraud"
- R.S. 42:1461, "Obligation Not to Misuse Public Funds"

We recommend that the department require its employees to record the actual time that they begin and end their workday and identify their actual work location on their time sheets. Department supervisors should periodically verify the accuracy of information provided on employee time sheets through personal observation. In addition, we recommend that the District Attorney for the Eleventh Judicial District of Louisiana review this information and take appropriate legal action, to include seeking restitution.

EMPLOYEES REIMBURSED FOR LODGING AND MEALS IN VIOLATION OF STATE TRAVEL REGULATIONS

During fiscal years 1996, 1997, and 1998, the department reimbursed Mr. Ronald Tassin, Elections Director, and Mr. Demarc Fields, Assistant Commissioner of Minority Affairs, a total of \$52,911 for travel expenses related to travel from their personal residences to work in the Baton Rouge office in violation of the state travel regulations. Had the department followed the State of Louisiana travel regulations, these expenses may have been avoided.

The Division of Administration - General Travel Rules and Regulations provides that every state employee shall be assigned an official domicile. According to the travel regulations, the official domicile of an employee assigned to an office shall be, at a minimum, the city limits in which the office is located (work location). The official domicile of a person located in the field shall be the nearest town or city where the majority of work is performed, or area designated by the department head. This designation, in all cases, must be in the best interest of the agency and not for the convenience of the person. The employee's official domicile is used to calculate the amount of reimbursement of travel expenses to which the employee is entitled. An employee is not entitled to receive reimbursement for commuting expenses between his home and the office where he is domiciled.

Though they worked the majority of their time in the Baton Rouge office, Mr. Tassin and Mr. Fields were domiciled as "interstate" rather than in Baton Rouge. As a result, the department reimbursed them for meals and lodging for their travels to and overnight stays in Baton Rouge.

Harold Tassin

On February 8, 1996, the department submitted a personnel action form to the Department of State Civil Service detailing Mr. Tassin to special duty as the Director of Elections. Mr. Tassin served in this position continuously and was formally promoted to the position in February 1998. During fiscal years 1996, 1997, and 1998, Mr. Tassin worked the majority of his time in the Baton Rouge office. Mr. Tassin was reimbursed by the department \$61,189 for lodging and meals for travel from his home in Coushatta, Louisiana, to Baton Rouge to perform his duties as the Elections Director. Dr. Alan Elkins, Assistant Commissioner, approved these reimbursements.

Mr. Tassin stated that he drives approximately 84 miles one way to the office on Monday mornings and returns home on Fridays. He estimated that he spends 35% to 80% of his time in the Baton Rouge office.

During our interview of Dr. Elkins, he stated that Mr. Tassin's domicile status is considered to be statewide though he believes Mr. Tassin should have been domiciled in Baton Rouge.

As a result of our inquiry into Mr. Tassin's travel, Commissioner Jerry Fowler sent letters dated August 15 and August 17, 1998, to the Division of Administration seeking retroactive approval to place Mr. Tassin on six months "travel status," beginning in February 1998, to allow him time to relocate to Baton Rouge. As of the date of this report, Mr. Tassin continues to receive reimbursement for his travel to Baton Rouge.

Dennis Fields

On January 31, 1994, Mr. Fields was appointed as the Assistant Commissioner of Minority Affairs. At this time, his official domicile was listed as East Baton Rouge. However, on September 26, 1996, the department submitted a personnel action form to the Department of State Civil Service changing Mr. Fields' work location from East Baton Rouge to statewide. During fiscal years ending 1997 and 1998, Mr. Fields was reimbursed \$11,737 for lodging and meals associated with travel from his home located in Winthorn, Louisiana, to the Baton Rouge office (144 miles one way).

According to Mr. Fields, he usually tries to work at least three days a week in the Baton Rouge office. Mr. Fields stated that in 1994, when he assumed the position of assistant commissioner of minority affairs, he was aware that his official domicile was East Baton Rouge Parish. He stated that on September 26, 1996, his domicile was changed to "statewide" in order to help him; however, the decision to change his domicile was made at a level higher than his.

Dr. Elkins stated that Mr. Fields travels all over the state to resolve minority affairs issues; however, the majority of Mr. Fields' work is in Baton Rouge. As of the date of this report, the department continues to reimburse Mr. Fields for his travel and stay in Baton Rouge.

These actions may be in violation of the following state laws:

- R.S. 39:201 and FPM 49, "General Travel Regulations"
- R.S. 42:1461(A), "Obligation Not to Misuse Public Funds"
- Article 3, Section 14 of the Louisiana Constitution

The department should properly declare the official domicile of Mr. Tassin and Mr. Fields, as well as other department employees, and make all reimbursements for travel in accordance with the state travel regulations.

DIRECTOR OF INFORMATION SYSTEMS USED PUBLIC VEHICLE AND EMPLOYEE FOR PERSONAL USE

Mr. Charles Schatzle, Director of Information Systems, used a department vehicle and an employee under his supervision to move his personal furniture and possessions from his old residence to his new residence. As a result, the department was without the use of its vehicle for several days and paid an employee for services not received.

From June 22, 1998, to July 2, 1998, Mr. Schatzle took annual leave to move from his personal residence to a new home. Mr. Schatzle (1) used a department van without authorization from his supervisor, (2) instructed a student employee to assist him with his move, and (3) approved the student's time sheet that listed the hours during the move as hours worked for the department.

On June 22, 23, 24, and 25, 1998, we observed the department van at Mr. Schatzle's residences being used to move his personal furniture and possessions. Mr. Schatzle told us that when it was brought to his attention that his use of the vehicle was improper, he reimbursed the office \$58. R.S. 14:68 prohibits the unauthorized use of public vehicles. According to Dr. C. Alan Hittm, First Assistant Commissioner, and Director of Registration Ms. Gayle Truly, no employee should use the department vehicles for personal use. In addition, the department van has a sticker in the back window of the vehicle that reads, "For Official Use Only."

Mr. Schatzle also instructed Ms. Allison Jeffries, a department student employee under his supervision, to assist him with his move and approved her time sheet causing her to be paid for hours not actually worked. According to Mr. Schatzle, he asked Ms. Jeffries to drive the van to his home and assist with his move. Ms. Jeffries informed us that for four days in June 1998, during work hours, she helped Mr. Schatzle move while being paid by the department. According to Ms. Jeffries, she assisted Mr. Schatzle for 8 hours on three days and six hours on the fourth day. Records show that she submitted 8 hours as worked on her time sheet for each of these days and was paid \$180 by the department. Mr. Schatzle stated that, at the time

he approved Ms. Jeffries's time sheet, he had not thought to take into consideration the hours she helped him move. Mr. Schatzle further stated that Ms. Jeffries should not have been paid by the department for those hours.

Ms. Phaniec Longaspea is the department supervisor who normally approves student employees' time sheets. According to Ms. Longaspea, she would not approve Ms. Jeffries's time sheet and recalled telling Ms. Jeffries that she felt the department should not pay Ms. Jeffries for the hours she helped Mr. Schatzle move. Ms. Longaspea took Ms. Jeffries's time sheet to Mr. Schatzle for his approval.

Based on these actions, Mr. Schatzle may have violated one or more of the following Louisiana laws:

- R.S. 14:68, "Unauthorized Use of a Movable"
- R.S. 14:134, "Malfeasance in Office"
- R.S. 14:138, "Payroll Fraud"
- R.S. 42:1461(A), "Obligation Not to Misuse Public Funds"

We recommend that the department prohibit the use of public vehicles and employees for personal use. The department should also take steps to recover any public funds paid to Ms. Jeffries for services not performed. We further recommend that the District Attorney for the Nineteenth Judicial District of Louisiana review this information and take appropriate legal action, to include seeking restitution.

Attachment I

Management's Response



JOHN M. HENRIK
Commissioner of Elections

State of Louisiana
DEPARTMENT OF ELECTIONS & REGISTRATION

March 15, 1999

Daniel G. Kyle, Ph.D., CPA, CFE
Legislative Auditor
Office of Legislative Auditor
State of Louisiana
Post Office Box 94097
Baton Rouge, Louisiana 70804-9097

Dear Dr. Kyle:

Enclosed herewith is the Department's response to the Investigative Report on the Department of Elections and Registration as prepared by the Office of Legislative Auditor.

Please contact me if you should have any questions concerning our response.

Sincerely,



Jerry M. Heniker
Commissioner

JMH/vg

Enclosure

DEPARTMENT OF ELECTIONS AND REGISTRATION DRAYAGE CONTRACTS AND WAREHOUSE LEASES

The Department has requested an advisory opinion from the State Board of Ethics as to the ethical considerations involved in certain drayage contracts and warehouse leases questioned by the auditors and the contentions that certain employees may have profited from such. The Commissioner of Elections will take any necessary action as advised by the Board of Ethics.

The Department shall incorporate a section in the Department's personnel manual to ensure that Department employees and their immediate family members do not enter into contracts and leases in violation of the provisions of the Code of Governmental Ethics. The Department shall also include a section which shall prohibit Department employees from receiving prohibited payments from the Department other than the employee's payroll check or certain other allowable payments, such as payment for serving as a member or secretary of the Parish Board of Election Supervisors or as a commissioner for elections.

The Department is requiring each employee to complete an annual certification form to disclose any possible entities or transactions in which a conflict of interest may arise. The Department shall review all such forms and disclosures and request advisory opinions as necessary.

DEPARTMENT OF ELECTIONS AND REGISTRATION DRAYAGE SERVICES

The Department of Elections and Registration is responsible for ensuring that voting machines are held in a state of readiness to be available on election day for all elections in the State of Louisiana. This responsibility requires the Department to have a means of delivering the state's 8,595 voting machines to approximately 3,900 voting precincts throughout the state on election day. This is an enormous task that requires a significant amount of resources from manpower to trucks and delivery equipment.

The auditors have suggested that the Department reconsider its need for outside drayage contractors and consider using Department employees to perform the drayage activities for elections. This suggestion was made based on the auditors' observations of Department employees performing drayage activities in certain parishes in violation of Department policy. Although the actions of certain employees in certain parishes may have given the appearance that Department employees can meet the responsibilities for drayage, such is not the case. Drayage of voting machines requires personnel and vehicles that are not currently available through the Department's resources. In the instances observed by the auditors, the Department employees involved in drayage were assisted by other persons not employed by the Department and were using privately owned vehicles to move machines.

In order for the Department to be self-sufficient in performing drayage activities, it would be necessary for the Department to acquire a fleet of large trucks and hire additional personnel. The largest vehicle currently owned by the Department is a cargo van that would be insufficient to transport even the smallest electronic machines. A minimum of one or two trucks would be necessary for small parishes, with ten or more being required for the state's larger parishes. The cost of the required fleet would be prohibitive and not feasible for the amount of use necessary for voting machine drayage for the state's elections. Funding for additional personnel salaries and benefits would also be required to ensure that the Department could meet the responsibility of having the voting machines delivered to approximately 3,900 precincts and ready for election day.

The Department cannot eliminate the drayage contracts and perform drayage activities using current resources, and the cost of the Department performing the drayage would greatly outweigh the benefits. Since the auditors have brought it to our attention that employees were performing drayage activities, the Department has strengthened internal controls to ensure that the Department is receiving the services from employees for which they are being paid and that they are not performing drayage for their personal benefit. The Department shall incorporate a section in the Department's personnel manual that prohibits

employees from participating in any drayage activities. The Department has held a meeting with the district supervisors for each parish to emphasize the Department's policy on drayage and to emphasize the supervisor's responsibility to ensure that their subordinates comply with the Department's policy.

The employees cited for performing drayage activities for drayage contractors while on the Department's payroll are facing proposed disciplinary action by the Department. Each of the employees who violated the Department's policy prohibiting employees from performing drayage activities is facing a proposed suspension without pay for ten days. Those employees have been notified of the proposed disciplinary action in writing in accordance with Civil Service regulations.

In addition, each of these employees will be required to refund the Department for time reported on the time and attendance records while they were involved in drayage activities for the drayage contractors. The employees and refund amounts are as follows:

1.	Mr. James R. King	\$75
2.	Mr. James Kirby King	\$90
3.	Mr. Kermie King	\$70
4.	Mr. Toby Trichel	\$73

Additionally, Mr. Toby Trichel, an employee of Independent Voting Machines (IVM), responsible for voting machine repairs, participated in drayage activities for the drayage contractor. IVM invoiced the Department \$376 for this employee for contract related services while he was actually performing drayage activities. The Department is currently seeking a refund of \$376 from IVM. The Department will reiterate the services allowed under the contract and provide IVM with a detailed description of the contractor employee's responsibilities as to the handling of voting machines.

DEPARTMENT OF ELECTIONS AND REGISTRATION EMPLOYEE TIME AND ATTENDANCE

The Department employs approximately 122 persons, full and part time, who staff the 65 warehouses throughout the state. These employees are responsible for maintaining the state's voting machines and ensuring that the voting machines are ready and available for all elections in the state. As such, the warehouse employees, especially supervisors, are required to work in various locations preparing machines for elections. Thus, these employees are not always present at the warehouse to which they are permanently assigned. While traveling between warehouses, these employees use state vehicles or personal vehicles, for which they may or may not claim mileage expense reimbursement.

During the course of their audit, the Legislative Auditors observed Department employees, reviewed time and attendance and travel expense account report forms, and formed the conclusions as to whether the employees were working for the Department during the times reported on the time and attendance reports.

Based on a review of time and attendance and expense reports, it could appear to a person unfamiliar with Department operations that these warehouse employees were not at work, when in actuality they were performing work at another warehouse. The time and attendance and travel expense account report forms being used by the Department did not specifically reflect the actual work location of each employee at all times. In order to remove the appearance of impropriety, the Department has revised its time and attendance report to include specific details as to the work location of each employee each day. Additionally, the time and attendance report has been modified to require the employee to report the beginning and ending work times each day. The Department has also met with the supervisors to emphasize the importance of their personal observations of employees' performance and comparison to time and attendance reports submitted by the employee.

There were occasions when four employees reported time worked on their time and attendance report while they were not performing meaningful service to the Department. These employees, one assigned to the Warehouse warehouse, one assigned to the Cuscuta warehouse, and two assigned to the Data Processing Office, were observed by the auditors performing personal activities during their normal working hours. These employees who improperly reported hours worked on their time and attendance report are facing disciplinary action by the Department. These employees have been notified of the proposed disciplinary action in writing in accordance with Civil Service regulations. Rhonald Parker, Jesse Parker, and Charles Schable are facing a suspension without pay for ten days. Ms. Jefferson has reimbursed the Department \$188 which she was paid for hours not worked and has resigned her position with the Department.

Additionally, the employees listed below will be required to refund the Department the amount they were paid for which they did not perform their assigned duties:

- | | | |
|----|----------------------|------------|
| 1. | Mr. Ronald Parker | \$ 187.33 |
| 2. | Mr. Jesse Parker | \$ 37.15 |
| 3. | Mr. Charles Schatzle | \$1,611.00 |

Through these revised time and attendance reporting procedures and an increased awareness of supervisory responsibilities, the Department has made every effort to ensure that employees are performing their work duties during the times reported on their time and attendance reports and that such improper reporting does not recur.

**DEPARTMENT OF ELECTIONS AND REGISTRATION
DEPARTMENT SHOULD RECONSIDER CONTRACT FOR INSPECTION SERVICES**

Prior to the Department of Elections and Registration accepting the responsibility to inspect each polling place for accessibility, numerous polling places throughout the state were either substandard or completely inaccessible to elderly and handicapped voters. Since the inspections began, accessibility has improved dramatically.

The problem was that local government selected the polling places and was required to certify that each was accessible. Even under the most lenient accountability standard, the same agent should never assume such dual responsibility. Often, competing interests vie for the selection of a particular polling place.

By contracting with B. Lehman and Associates, Inc., the Department was able to assure that citizens would not be discriminated due to an inaccessibility of the polling place. Unfortunately, no inspections were made in Fiscal Year 1995-1996 as the contract, although approved by the Division of Administration, was not awarded due to the insufficiency of time to permit the inspections. Funds are currently not included in the Appropriation Bill for Fiscal Year 1999-2000 for the contract and we must now rely on local governments to police the situation. The Department is in the process of informing each Police Jury or its equivalent that it will be responsible for assuring the accessibility of every polling place in its parish. The Department will continue to receive and pass along any comments or complaints from voters.

Ms. Ann Williamson never reviewed the contract awarded B. Lehman and Associates in the course of her contractual duties for the Department. The contract with Ms. Williamson for legal services may contain a broad definition of duties but her actual duties have been to provide legal advice in certain instances and to represent the Department in election contexts when needed.

DEPARTMENT OF ELECTIONS AND REGISTRATION COMMERCIAL REQUESTS LISTS

In the past, the Department has provided commercial lists of registered voters to some individuals at no charge. As noted by the auditors, the lists were given to elected officials and other individuals without charge. These lists were provided to aid state and other officials in their capacity as government leaders and served in the interest of the state. In addition, lists were provided to some nonprofit organizations.

The Legislative Auditor has recommended that no lists should be provided to anyone without the appropriate charge. Based on this recommendation, the Department requested and received a Letter of Advice from the Louisiana Attorney General. The Attorney General has advised the Department not to waive any commercial services cost in providing lists of registered voters. Accordingly, the Department has ceased providing any lists without the appropriate charge and will implement procedures to assure that appropriate charges are levied for all future requests.

The use of the test function in the commercial request system has been restricted for use only to test programming changes. The Department has also modified its procedures for producing voter registration lists. All requests are accompanied by a completed request form that includes pertinent information for costs and billing in order to ensure that all requests are properly recorded and accounted for.

**DEPARTMENT OF ELECTIONS AND REGISTRATION
STATE TRAVEL REGULATIONS AND STATE VEHICLE USAGE**

The Department has abided by the recommendation of the Legislative Auditors to have Mr. Tassin and Mr. Fields domiciled in Baton Rouge. In addition, the Department has confirmed that no other similar infractions have occurred.

The Department shall incorporate a policy in the personnel manual that strictly prohibits the use of state vehicles and employees for personal use. The Department received reimbursement of \$58 in July 1998 for mileage and expenses from the employee who used the Department van for his personal use.

Attachment II

Legal Provisions

Legal Provisions

The following legal citations are referred to in the Findings and Recommendations section of this report:

R.S. 14:68 provides that unauthorized use of a movable is the intentional taking or use of a movable which belongs to another, either without the other's consent, or by means of fraudulent conduct, practices, or representations, but without any intention to deprive the other of the movable permanently.

R.S. 14:123 provides, in part, that filing false public records is the filing or depositing, with knowledge of its falsity of any forged or wrongfully altered document for record in any public office or with any public officer.

R.S. 14:134 provides, in part, that malfeasance in office is committed when any public officer or public employee shall (1) intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; (2) intentionally perform any such duty in an unlawful manner; or (3) knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him or to perform any such duty in an unlawful manner.

R.S. 14:138 provides, in part, that payroll fraud is committed when any public officer or public employee shall carry, cause to be carried, or permit to be carried, directly or indirectly, upon the employment list or payroll of his office, the name of any person as employee, or shall pay any employee, with knowledge that such employee is receiving payment or compensation for services not actually rendered by said employee or for services grossly inadequate for such payment or compensation.

R.S. 14:140 provides that public contract fraud is committed when any public officer or employee shall use his power or position as such officer or employee to secure any special favor of public funds to himself, or to any partnership to which he is a member, or to any corporation of which he is an officer, stockholder, or director.

R.S. 14:140(4) For the purposes of this section, splitting of profits, fees or commissions means the giving, offering to give, receiving or offering to receive, directly or indirectly, anything of apparent present or prospective value by or to a public officer or public employee or to any fund or fiduciary existing for the benefit of or use by such public officer or employee, when such value is derived from any agreement or contract in which the state or any subdivision thereof is a party.

R.S. 42:1113C(2)(b) provides that no public servant shall receive anything of economic value for or in consideration of services rendered from any person for whom such public servant would be prohibited from receiving a gift. R.S. 42:1115 prohibits public servants from receiving a gift from anyone who has a business relationship with their agency.

R.S. 42:1112 Participation in certain transactions involving the governmental entity provides that (A) no public servant shall participate in a transaction in which he has a personal substantial economic interest of which he may be reasonably expected to know involving the governmental entity. (B) No public servant shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any of the following persons has a substantial economic interest:

- (1) Any member of his immediate family.
- (2) Any person in which he has a substantial economic interest of which he may reasonably be expected to know.
- (3) Any person of which he is an officer, director, trustee, partner, or employee.
- (4) Any person with whom he is negotiating or has an arrangement concerning prospective employment.

R.S. 42:1113 provides that no public servant, excluding any legislator and any appointed member of any board or commission and any member of a governing authority of a parish with a population of ten thousand or less, or member of such a public servant's immediate family, or legal entity in which he has a controlling interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.

R.S. 42:1125 provides that no public servant shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person or employee of any person who has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency.

R.S. 42:1481(A) provides that officials, whether elected or appointed, by the act of accepting such office assume a personal obligation not to misappropriate, misapply, convert, release, or otherwise wrongfully take any funds, property or other thing of value belonging to the public entity in which they hold office.

Article 3, Section 14 of the Louisiana Constitution provides that except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

Attachment III

**Observations of
Department Employees**

Observations of Department Employees

The following activities, which were referred to in the finding titled "Employee Time and Attendance Reports Disagree With Observations of Investigative Auditors," were observed by investigative auditors during this investigative audit:

Mr. Ronald Parker

1. September 16, 1998 - Mr. Parker arrived at the Morehouse Parish warehouse at 8:29 a.m. He left at 9:43 a.m., stopped for a short period at a tractor dealer, and arrived at his home at 10:59 a.m. We observed that Mr. Parker's vehicle did not leave his home for the remainder of the day. Mr. Parker reported that he worked 8 hours on his time and attendance report and claimed 97 miles on his expense report for traveling to and from the West Carroll Parish warehouse.
2. September 17, 1998 - Mr. Parker conducted a personal errand at 7:28 a.m. and arrived at a McDonald's restaurant at 8:43 a.m. Mr. Parker left the McDonald's restaurant at 9:15 a.m. and traveled north on Highway 165. We observed Mr. Parker's vehicle at his home at 11:09 a.m. Mr. Parker reported that he worked 8 hours on his time and attendance report and claimed 95 miles on his expense report for travel to the West Carroll Parish warehouse.
3. September 18, 1998 - From 7:00 a.m. until 11:45 a.m., Mr. Parker's vehicle was observed at his home and Mr. Parker was not observed at the Morehouse Parish warehouse. He reported 8 hours on his time and attendance report and reported no travel on this date.
4. October 1, 1998 - Mr. Parker arrived at the Morehouse Parish warehouse at 9:00 a.m. and left at 9:50 a.m. Mr. Parker was not at the warehouse for the remainder of the day. He reported 8 hours on his time and attendance report and reported no travel on this date.
5. October 2, 1998 - Mr. Parker was not observed at the Morehouse Parish warehouse from 6:45 a.m. through 12:00 p.m. He reported 8 hours on his time and attendance report and reported no travel on this date.
6. October 28, 1998 - Mr. Parker was observed at his home from 3:15 p.m. through 4:30 p.m. though he reported on his time and attendance report that he worked 8 hours (8:00 a.m. - 5:00 p.m.).
7. October 21, 1998 - Mr. Parker conducted personal errands during the morning and arrived at the warehouse at 8:56 a.m. He reported on his time and attendance report that he worked 8 hours.

8. October 22, 1998 - Mr. Parker arrived at the warehouse at 8:30 a.m., left for lunch at 11:00 a.m., returned to the warehouse at 12:00 p.m., and left for the day at 12:30 p.m. During the afternoon, Mr. Parker made stops at a tractor dealer, bank, pharmacy, car wash, Southern Fillings, and a Honda dealer. Mr. Parker reported 8 hours of work at the Morehouse Parish warehouse on this date.
9. October 23, 1998 - We observed Mr. Parker from 7:00 a.m. to 11:35 a.m. During this time, he drove his son to school, made stops at a gas station, electrical supply store, appliance store, car dealer, and McDonald's. Mr. Parker reported that he worked 8 hours at the Morehouse Parish warehouse.
10. November 18, 1998 - Mr. Parker was observed at his home from 8:00 a.m. until 10:30 a.m. Mr. Parker reported that he worked 8 hours on his time and attendance report and reported that he incurred 63 miles, Morehouse to Richmond to Morehouse, on his expense report.

Mr. Tony Trichel

1. October 1, 1998 - Mr. Trichel arrived at the Morehouse Parish warehouse at 7:00 a.m. and left for the day at 9:50 a.m. Mr. Trichel was not at the warehouse for the remainder of the day. He reported 8 hours worked at the Morehouse Parish warehouse.
2. October 20, 1998 - We observed that Mr. Trichel was not at the Morehouse Parish warehouse from 12:00 p.m. to 4:30 p.m. though he reported 8 hours worked at the Morehouse Parish warehouse.
3. October 21, 1998 - We observed that Mr. Trichel was not at the Morehouse Parish warehouse from 7:00 a.m. to 4:30 p.m. He reported 8 hours worked at the Morehouse Parish warehouse.
4. October 22, 1998 - We observed the Morehouse Parish warehouse from 8:00 a.m. to 12:35 p.m. Mr. Trichel arrived at the Morehouse Parish warehouse at 10:54 a.m. and left at 11:00 a.m. He reported that he worked 8 hours at the Morehouse Parish warehouse.
5. November 18, 1998 - We observed that Mr. Trichel was not at the Morehouse Parish warehouse from 10:30 a.m. to 3:30 p.m. though he reported that he worked at the Morehouse Parish warehouse for 8 hours.
6. November 19, 1998 - We observed that Mr. Trichel was not at the Morehouse Parish warehouse from 7:30 a.m. to 4:30 p.m. though he reported that he worked 8 hours at the Morehouse Parish warehouse.